

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**ANNA ELIZABETH HUBER  
HOLCOMB,**

**Plaintiff,**

**v.**

**Case No: 6:18-cv-511-Orl-18DCI**

**COMMISSIONER OF SOCIAL  
SECURITY,**

**Defendant.**

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**REPORT AND RECOMMENDATION**

This cause comes before the Court for consideration without oral argument on the following motion:

**MOTION: Unopposed Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b)(1) (Doc. 25)**

**FILED: December 11, 2020**

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**THEREON it is Recommended that the motion be GRANTED.**

Plaintiff's counsel moves for an award of attorney fees pursuant to 42 U.S.C. § 406(b)(1). Doc. 25 (the Motion); Doc. 26 (the Memorandum of Law).<sup>1</sup> Plaintiff's counsel states that following the Court's reversal of the Commissioner's decision denying disability benefits and remand of the case for further administrative proceedings, Plaintiff was awarded retroactive benefits 25% of which is \$21,905.25. Doc. 26-1 at 2; *see* 42 U.S.C. § 406(b)(1) (recovery of such fees under this section may not exceed 25% of the total past-due benefits). But Plaintiff's counsel

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<sup>1</sup> This should be one document, not two. *See* Local Rule 3.01(a).

now seeks \$13,813.25 in attorney fees pursuant to § 406(b). Doc. 25. Plaintiff's counsel states that the fees he seeks to collect includes a deduction of the attorney fees (\$8,092.00) previously awarded under the Equal Access to Justice Act (EAJA). Doc. 26-1 at 3; *see Jackson v. Comm'r of Soc. Sec.*, 601 F.3d 1268, 1274 (11th Cir. 2010) (holding that counsel may effectuate the refund of a smaller EAJA award by either refunding the amount awarded under the EAJA to the client or deducting that amount from counsel's request for § 406(b) fees). Upon review, the undersigned finds that Plaintiff's counsel's request for \$13,813.25 in attorney fees does not run afoul of the limit imposed by § 406(b) and is reasonable under the circumstances of this case.

Accordingly, it is respectfully **RECOMMENDED** that the Motion (Doc. 25) be **GRANTED** and Plaintiff's counsel be authorized to charge and collect from Plaintiff \$13,813.25 in attorney fees.

#### **NOTICE TO PARTIES**

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

Recommended in Orlando, Florida on December 14, 2020.

  
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DANIEL C. IRICK  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge  
Counsel of Record  
Unrepresented Party  
Courtroom Deputy